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EXAMINER

MA, JOHNNY

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/904,825	Applicant(s) SHAH-NAZAROFF ET AL.	
	Examiner Johnny Ma	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 2, Double Patenting, filed 3/20/2006, with respect to Claims 1-30 rejected on the ground of non-statutory obviousness-type double patenting have been fully considered and are persuasive. The nonstatutory obviousness-type double patenting rejections of claims 1-30 have been withdrawn.
2. Applicant's remaining arguments filed 3/20/2006 have been fully considered but they are not persuasive.

Applicant argues that "Claim 1 is not concerned with the practices of commercial television and breaks from this tradition. Rather than indicate how many people watched or how many tunes tuned in, Claim 1 provides viewer rating based on received viewer feedback. There is no suggestion in Thomas that viewer feedback be received from viewers. Instead at paragraph 61, information is collected on the viewing activities of the user (e.g., which programs the user watches). Accordingly, this element of Claim 1 is not anticipated. Thomas further does not generate a rating based at least in part on the received feedback, not does Thomas provide such a rating to the viewer" (Remarks, pg. 3). The examiner respectfully disagrees. As noted by Applicant, the Thomas reference teaches "information is collected on the viewing activities of the user" wherein the "information collected in step 154 is used to generate real-time ratings such as real-time ratings of how popular (or unpopular) certain television programs are or real-time ratings indicating which non-program-guide applications such as video games are being used most (or least) often" (Thomas [0063]) and "the real-time ratings information generated at step 170 may be distributed to user television equipment 32 and displayed" (Thomas [0065]).

With regard to feedback, the examiner respectfully submits that applicant appears to argue that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a special definition of viewer feedback that precludes viewing activities) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Feedback is defined as "[t]he return of information about the result of a process or activity; an evaluative response" (see *The American Heritage® Dictionary of the English Language, Fourth Edition*). The viewing activities of the viewer serve as feedback in the sense that they comprise information about the result of an activity, the viewing of certain programming. Broadly speaking, the viewing activities provide information regarding the viewer ship of particular programming and thus provides feedback as to popularity of particular programming.

Applicant further argues "[t]he Examiner suggest that feedback is inherent since the ratings of any broadcast program inherently includes positive and negative comments. On the contrary, the fact that the monitored tuner tuned to a program or did not tune to a program does not necessarily indicate a positive or negative comment..." (Remarks pg. 3). As a preliminary manner, the examiner notes that this argument appears to be directed towards dependent claim 10. Furthermore, the examiner respectfully disagrees that positive feedback is not inherent to the Thomas viewer feedback system. As conceded by Applicant, although all of the viewer activity may be indicate positive feedback for a plurality of other reasons, at least a portion of received viewer activity indicates positive feedback regarding the viewed programming, not all viewers left the TV on or are viewing the programming despite a negative opinion.

As to claim 2, Applicant argues “Wheatley describes collecting ratings information for use only by the broadcaster. In the present invention ratings information based at least in part on received viewer feedback is provided to the viewer” (Remarks pg. 4). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As noted above, the Thomas et al. reference clearly teaches “ratings information based at least in part on received viewer feedback is provided to the viewer” wherein “information is collected on the viewing activities of the user” wherein the “information collected in step 154 is used to generate real-time ratings such as real-time ratings of how popular (or unpopular) certain television programs are or real-time ratings indicating which non-program-guide applications such as video games are being used most (or least) often” (Thomas [0063]) and “the real-time ratings information generated at step 170 may be distributed to user television equipment 32 and displayed” (Thomas [0065]).

Regarding claims 3, 4, and 18, Applicant argues “McKenna describes collecting survey information for use only by the broadcaster. It also appears as if it is only the commercials for which surveys are given (1:60-64, 2:27-31, 11:28-32). In the present invention ratings information based at least in part on received viewer feedback is provided to the viewer” (Remarks, pg. 4). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, as noted above

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the Thomas et al. reference clearly teaches ratings information based at least in part on received viewer feedback is provided to the viewer.

Applicant also argues "Only..., Logan, suggests that users should be allowed to receive program ratings, but this is directed to Internet radio. Applicant respectfully submit that it would not be obvious to adapt this Internet radio system to video broadcast as in the present invention" (Remarks, pg. 5). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, in the knowledge generally available to one of ordinary skill in the art. Both the Logan and Thomas references discuss providing media to users and obtaining feedback information, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. monitoring of viewing activities generation with the Logan questionnaire related to the broadcast for soliciting a rating for the purpose of providing a more accurate rating that is not based just on number of viewers but viewer opinion regarding the broadcast.

Terminal Disclaimer

3. The terminal disclaimer filed on 3/20/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,317,881 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 10, 12, 17, 19, and 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Thomas et al. (US 2005/0149964 A1).

As to claim 1, note the Thomas et al. reference that discloses a program guide system with monitoring of advertisement usage and user activities. The claimed “presenting a broadcast to a viewer” is met by “[t]elevision distribution facility 28 is a facility for distributing television signals to users...” (Thomas [0029]). The claimed “receiving feedback to the broadcast from the viewer” is met by “the system may maintain data structures such as viewing activities data structure 136 of FIG. 7 to keep track of the programs that each viewer watches” (Thomas [0057]) wherein “such data structures may be collected in whole or in part in user television equipment 32 (FIGS. 1 and 2) and passed to television distribution facility 22 or a separate data processing facility” (Thomas [0059]). The claimed “generating a rating of the broadcast based at least in part on the received feedback to the broadcast from the viewer” is met by the “information collected in step 154 is used to generate real-time ratings such as real-time ratings of how popular (or unpopular) certain television programs are or real-time ratings indicating which non-program-guide applications such as video games are being used most (or least) often” (Thomas [0063]). The claimed “providing to the viewer ratings of other broadcasts based at least in part

on received viewer feedback to the other broadcasts from other viewers” is met by “the real-time ratings information generated at step 170 may be distributed to user television equipment 32 and displayed” (Thomas [0065]).

As to claim 10, the claimed “wherein the ratings of other broadcasts comprise an indication of a proportion of viewer feedback which is positive toward the broadcast” is met by the ratings being provided to users (Thomas [0065]) since the rating of any broadcast program inherently includes positive and negative comments.

As to claim 12, the claimed “wherein providing ratings of other broadcasts comprises providing the ratings along with a programming guide that includes the other broadcasts” is met by “[r]eal-time ratings may be provided to users at user television equipment 32 for display on television 38 in real time... An illustrative real-time ratings program guide screen 176 is shown in FIG. 10a... contains title 178, real-time ratings information 180...” (Thomas [0066]).

As to claim 17, please see rejection of claim 1 wherein the Thomas et al. reference discloses that the system comprises processors for handling the disclosed tasks which inherently includes machine code for the processors.

As to claim 19, the claimed “instructions causing the machine to perform operations comprising generating a rating further comprise instructions causing the machine to perform operations comprising generating a rating using viewer characteristic information to generate separate ratings for different categories of viewers” is met by the “[w]hen the user selects options button 182, the user is provided with opportunities to select a type of real-time ratings information that the user desires to view... [t]he user may direct the program guide to display

real-time ratings information for the nation, for a state, for a metropolitan area, a city or town, or any other suitable geographic area” (Thomas [0070]).

As to claim 27, note the Thomas et al. reference that discloses a program guide system with monitoring of advertisement usage and user activities. The claimed “a communications interface to receive viewer feedback to a broadcast from a plurality of different viewers of the broadcast” is met by “[f]or example, such data structures may be collected in whole or in part in user televisions equipment 32 (FIGS. 1 and 2) and passed to television distribution facility 28 or other suitable data processing facility for analysis” (Thomas [0059]) wherein a communication interface is inherent to the receipt of feed back by the facility. The claimed “a processor to generate a rating of the broadcast based at least in part on the received viewer feedback to the broadcast, the rating indicated a likelihood of interest in the first broadcast for potential subsequent viewers” is met by “the information collected in step 154 is used to generate real-time ratings such as real-time ratings of how popular (or unpopular) certain television programs” (Thomas [0063]) wherein a processor is inherent to the generation of the disclosed real-time ratings. The claimed “wherein the communications interface provides the rating of the broadcast to viewer entertainment systems for display to potential subsequent viewers of the broadcast the potential subsequent viewers including the plurality of different viewers of the broadcast” is met by “[a]t step 174, the real-time ratings information generated at step 170 may be distributed to user television equipment 32 and displayed” (Thomas [0065]).

As to claim 28, the claimed “a programming guide server to provide a programming guide to the viewer entertainment systems through the communications interface the broadcasts

of the programming guide” is met by “television distribution facility 28 [for distributing]...program listing information” (Thomas [0039]).

The claimed “being associated with a rating” is met by “[t]he program guide may also provide real-time ratings information to the user automatically” (Thomas [0066]) wherein the ratings information is collected and generated by television distribution facility [programming guide server] (Thomas [0059,0063]).

As to claim 29, the claimed “wherein the communications interface receives viewer characteristic information along with the viewer feedback and wherein the control circuitry generates a rating using the viewer characteristics information to generate separate ratings for different categories of viewers” is met by the “[w]hen the user selects options button 182, the user is provided with opportunities to select a type of real-time ratings information that the user desires to view...[t]he user may direct the program guide to display real-time ratings information for the nation, for a state, for a metropolitan area, a city or town, or any other suitable geographic area” (Thomas [0070]).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Wheatley et al. (US 5,512,933).

As to claim 2, the claimed “wherein receiving feedback comprises receiving feedback from the viewer after the broadcast.” Note the Thomas et al. reference feedback for real-time ratings information “may be collected in whole or in part in user television equipment 32 (FIGS. 1 and 2) and passed to television distribution facility 28 or other suitable data processing facility for analysis” (Thomas [0059]). However, the Thomas et al. reference is silent as to when the feedback information is sent. Now note the Wheatley et al. reference that discloses the claimed “receiving feedback comprises receiving feedback from the viewer after the broadcast” wherein “[i]t is often desirable to extend the capabilities of an audience measurement system to collect qualitative data from viewers... Conventionally this is done by prompting the viewers to rate the programme they are watching (or have just watched)” (Wheatley 13:24-35). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. feedback information with the Wheatley et al. qualitative feedback after a broadcast has been watched for the purpose of providing a more accurate rating that is not only based just on number of viewers but viewer opinion regarding the broadcast.

5. Claims 3, 4, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of McKenna et al. (US 4,816,904).

As to claim 3, the claimed “wherein receiving feedback comprises providing a questionnaire to the viewer in response to a request from the viewer to provide feedback.” Note the Thomas et al. reference feedback for real-time ratings information “may be collected in whole or in part in user television equipment 32 (FIGS. 1 and 2) and passed to television distribution facility 28 or other suitable data processing facility for analysis” (Thomas [0059]). ”

Note, the Thomas et al. reference discloses “[i]f system 20 contains a viewing activities monitor such as viewing activities monitor 102 of FIG. 4, the system may maintain data structures such as viewing activities data structure 136 of FIG. 7 to keep track of the program that each viewer watches” (Thomas [0057]) to generate real-time ratings (Thomas [0063]). However, the Thomas et al. reference does not specifically providing a questionnaire to the viewer in response to a request from the viewer to provide feedback. Now note the McKenna et al. reference that discloses a television and market research data collection system and method wherein survey questionnaires are stored in a data collection unit and displayed to a user upon user request (by selection of the survey pushbutton switch) (McKenna 7:28-47). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. monitoring of viewing activities for ratings generation with the McKenna et al. questionnaire upon request for the purpose providing a more accurate rating that is not only based just on number of viewers but viewer opinion regarding the broadcast and the ability to display questionnaires to the user when it is convenient to the user.

As to claim 4, the claimed “wherein the request from the viewer comprises an identification of one form among a list of broadcasts recently viewed by the viewer” is met by the Thomas et al. and McKenna et al. combination as discussed in the rejection of claim 3, wherein “the system may maintain data structures such as viewing activities data structure 136 of FIG. 7 to keep track of the program that each viewer watches [a list of previously watched programs]” (Thomas [0057]). Also note that the Thomas et al. and McKenna et al. combination teaches requesting a questionnaire related to programming wherein it is inherent that the request

comprise some kind of identification in order to retrieve a questionnaire corresponding to a particular program.

As to claim 18, please see rejection of claim 3.

6. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Logan et al. (US 5,732,216).

As to claim 5, the claimed “wherein receiving feedback from the viewer comprises receiving answer to a questionnaire, the questionnaire including questions that are specific to the broadcast” Note, the Thomas et al. reference discloses “[i]f system 20 contains a viewing activities monitor such as viewing activities monitor 102 of FIG. 4, the system may maintain data structures such as viewing activities data structure 136 of FIG. 7 to keep track of the program that each viewer watches” (Thomas [0057]) to generate real-time ratings (Thomas [0063]). However, the Thomas et al. reference does not specifically disclose using questionnaires to solicit data feed back from the viewer specific to the broadcast. Now note the Logan et al. reference that discloses the use of questionnaires to gather data from users including survey data, program ratings, and the like (Logan 2:31-46), wherein a questionnaire by definition includes a plurality of questions as defined by Merriam-Webster’s Collegiate Dictionary 10th Edition (“a set of questions for obtaining statistically useful or personal information from individuals”) . Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. monitoring of viewing activities for ratings generation with the Logan questionnaire related to the broadcast for soliciting a rating for the purpose of providing a more accurate rating that is not only based just on number of viewers but viewer opinion regarding the broadcast.

As to claim 6, the claimed “further comprising offering an incentive to the viewer to encourage the viewer to provide feedback.” Note the Thomas et al. reference discloses “the system may maintain data structures such as viewing activities data structure 136 of FIG. 7 to keep track of the programs that each viewer watches” (Thomas [0057]) wherein “such data structures may be collected in whole or in part in user television equipment 32 (FIGS. 1 and 2) and passed to television distribution facility 22 or a separate data processing facility” (Thomas [0059]) the “information collected in step 154 is used to generate real-time ratings such as real-time ratings of how popular (or unpopular) certain television programs are or real-time ratings indicating which non-program-guide applications such as video games are being used most (or least) often” (Thomas [0063]). However, the Thomas et al. reference does not specifically disclose providing the user an incentive to provide feedback. Now note the Logan et al. reference that discloses the claimed “further comprising offering an incentive to the viewer to encourage the viewer to provide feedback” wherein the system can provide a “fill-in-the-blanks” questionnaire that can be used to gather data from users, including survey data, program ratings, and the like wherein the subscribers who provide requested information may receive credit which reduces subscription charges or other incentives” (Logan 2:31-46). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. feedback collection with the Logan questionnaires and incentives for the purpose of providing ratings information that more accurately reflects a user’s opinion of the programming and to provide an incentive so that the user will more likely provide the requested information.

7. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Herz et al. (US 5,758,257).

As to claim 7, the claimed “further comprising receiving viewer characteristic information about the viewer along with the feedback from the viewer.” Note the Thomas et al. reference discloses a plurality of data that may be collected and distributed to the headend (Thomas [0059]). The Thomas et al. reference further discloses “[w]hen the user selects options button 182, the user is provided with opportunities to select a type of real-time ratings information that the user desires to view...[t]he user may direct the program guide to display real-time ratings information for the nation, for a state, for a metropolitan area, a city or town, or any other suitable geographic area” (Thomas [0070]). However, the Thomas et al. reference does not specifically disclose a method for identifying ratings specific to a geographic area. Now note the Herz et al. reference that discloses a system and method for scheduling broadcast of and access to video programs and other data using customer profiles. The claimed “further comprising receiving viewer characteristic information about the viewer along with the feedback from the viewer” is met by the receipt of customer questionnaires, customer demographics, relevance feedback techniques, default profiles and the like (Herz 4:33-58) wherein demographic information includes geographic location such as by zip codes (Herz 11:59-66). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. feedback with the Herz et al. feedback with viewer characteristic information for the purpose of providing a data to identify feedback based on location and thus determine ratings for specific geographic locations.

As to claim 9, the claimed “wherein generating a rating comprises generating a rating using the viewer characteristic information to generate separate ratings for different categories of viewers” is met by the Thomas et al. and Herz et al. combination as discussed in the rejection of claim 7 wherein the characteristic data including geographic location is used to generate separate ratings for different geographic locations.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Herz et al. (US 5,758,257) and Sahai et al. (US 6,594,699 B1).

As to claim 8, the claimed “wherein the viewer characteristic information includes hardware capabilities of an entertainment system of the viewer.” Note the Thomas et al. reference teaches the monitoring of a plurality of user characteristics including the usage of various program guide screens and non-program-guide applications the user runs. However, the Thomas et al. reference does not specifically teach monitoring hardware capabilities. Now note the Sahai et al. reference that discloses a system for capability based multimedia streaming over a network. The claimed “wherein the viewer characteristic information includes hardware capabilities of an entertainment system of the viewer” is met by “[t]he [client] capabilities can be shipped and then stored n the server” (Sahai et al. 3:5-60; 32-40). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. and Herz et al. combination teaching a monitoring system including viewer characteristics to include the Sahai et al. hardware capabilities for the purpose of providing programming providers with data regarding the

capabilities of user systems in order to efficiently determine what type of applications or enhanced programming options to provide to viewers.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Lett (US 5,539,822).

As to claim 11, the claimed “further comprising providing the generated rating of the broadcast to programming providers.” Note the Thomas et al. reference discloses “the information collected in step 154 is used to generate real-time ratings such as real-time ratings of how popular (or unpopular) certain programs are” (Thomas [0063]) and “[a]t step 174, the real-time ratings information generated at step 170 may be distributed to user television equipment 32 and displayed” (Thomas [0065]). However, the Thomas et al. reference is silent as to providing the ratings information to programming providers. Now note the Lett reference that discloses a system and method for subscriber interactivity in a television system wherein viewing statistic data are provided to the service providers for feedback as to the popularity of their programming choices (Lett 13:34-38). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. ratings information with the Lett providing of feedback regarding programming to service providers for the purpose of allowing the users to determine the popularity of their programming choices and adjust their schedules to better suit the tastes of the consumers.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1).

As to claim 13, the claimed “wherein providing the ratings of other broadcasts comprises providing the ratings along with a programming guide that includes the other broadcasts.” Note

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the Thomas et al. reference discloses “[a]t step 170, the information collected in step 154 is used to generate real-time ratings” (Thomas [0063]). However, the Thomas et al. reference is silent as to whether the real-time ratings are generated as user data is received or after all user data has been collected. Nevertheless, the examiner gives Official Notice that it is notoriously well known in the art of data processing, to perform processing on data as they arrive for the purpose of providing real-time results that may be viewed more quickly by obviating the need to wait until all data is received before processing. Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. real-time ratings generation accordingly for the above stated advantages.

11. Claims 14, 20, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Barrett et al. (US 6,005,597).

As to claim 14, the claimed “further comprising presenting a programming guide of the broadcast to the viewer” is met by “real-time ratings program guide screen 176 is shown in FIG. 10a...Screen 176 contains title 178, real-time ratings information 180, options button 182, and cancel button 183” (Thomas [0066]) and various other guide displays (Thomas [0070]). However, the Thomas et al. reference doesn’t specifically disclose “wherein the other broadcasts are ranked based on the ratings.” Now note the Barrett reference that discloses channels are ranked according to their scores, highest score to lowest (Barrett 10:44-46). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. display of programming with rating information with the Barrett et al. ranking for the purpose of displaying programming that is

sorted based on the rating so that the user may quickly identify the ranking of a given program relative to the other programming.

As to claim 20, the claimed “assembling a list of available broadcasts using viewer characteristic information for the viewer; ranking the available broadcasts in the list based on the rating for each respective broadcast; and presenting a programming guide to the viewer showing the ranked.” Thomas et al reference fails to specifically disclose presenting a program guide of available broadcasts to a viewer wherein the available broadcasts are ranked based on viewer characteristics information as recited in the claims. Barrett discloses a method and apparatus for presenting a program guide of available broadcasts to a viewer where the available broadcasts are ranked based on viewer characteristics information for the advantage of providing the viewer with a quick and convenient way to select a program desired by the viewer. This system provides a redacted listing of broadcast programs based on the viewer characteristics to facilitate quick program selection instead of selecting from a full cumbersome program listing. See col. 2, lines 9-43 and col. 7, lines 50-57. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. system to include presenting a program guide of available broadcasts to a viewer wherein the available broadcasts are ranked based on viewer characteristics information, as taught by Barrett, for the advantage of providing the viewer with a quick and convenient way to select a program desired by the viewer.

As to claim 30, please see rejection of claim 20.

12. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Herz et al. (US 5,758,257) and Barrett et al. (US 6,005,597).

As to claim 15, the claimed “assembling a list of available broadcasts using viewer characteristic information for the viewer; ranking the available broadcasts in the list based on the rating for each respective broadcast; and presenting a programming guide to the viewer showing the ranked.” The combined systems of Thomas et al. and Herz et al. fail to specifically disclose presenting a program guide of available broadcasts to a viewer wherein the available broadcasts are ranked based on viewer characteristics information as recited in the claims. Barrett discloses a method and apparatus for presenting a program guide of available broadcasts to a viewer where the available broadcasts are ranked based on viewer characteristics information for the advantage of providing the viewer with a quick and convenient way to select a program desired by the viewer. This system provides a redacted listing of broadcast programs based on the viewer characteristics to facilitate quick program selection instead of selecting from a full cumbersome program listing. See col. 2, lines 9-43 and col. 7, lines 50-57. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined systems of Thomas et al. and Herz et al. to include presenting a program guide of available broadcasts to a viewer wherein the available broadcasts are ranked based on viewer characteristics information, as taught by Barrett, for the advantage of providing the viewer with a quick and convenient way to select a program desired by the viewer.

As to claim 16, the claimed “further comprising presenting a programming guide of the other broadcasts to the viewer” is met by “real-time ratings program guide screen 176 is shown in FIG. 10a...Screen 176 contains title 178, real-time ratings information 180, options button 182, and cancel button 183” (Thomas [0066]) and various other guide displays (Thomas [0070]). However, the Thomas et al. reference doesn’t specifically disclose “wherein the other broadcasts

are ranked based on the ratings.” Now note the Barrett reference that discloses channels are ranked according to their scores, highest score to lowest (Barrett 10:44-46). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. display of programming with rating information with the Barrett et al. ranking for the purpose of displaying programming that is sorted based on the rating so that the user may quickly identify the ranking of a given program relative to the other programming. The claimed “[ranked based] on the viewer characteristic information” is met by the Thomas et al., Herz et al., and Barrett et al. combination wherein ratings may further be based on geographic area (Thomas [0070], viewer characteristic information as discussed in the rejection of claim 7.

13. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Logan et al. (US 5,732,216) and Lett (US 5,539,822).

As to claim 21, note the Thomas et al. reference that discloses a program guide system with monitoring of advertisement usage and user activities. Note, the Thomas et al. reference discloses “[i]f system 20 contains a viewing activities monitor such as viewing activities monitor 102 of FIG. 4, the system may maintain data structures such as viewing activities data structure 136 of FIG. 7 to keep track of the program that each viewer watches” (Thomas [0057]) to generate real-time ratings (Thomas [0063]). However, the Thomas et al. reference does not specifically disclose using questionnaires to solicit data feed back from the viewer specific to the broadcast. Now note the Logan et al. reference that discloses the use of questionnaires to gather data from users including survey data, program ratings, and the like (Logan 2:31-46), wherein a

questionnaire by definition includes a plurality of questions as defined by Merriam-Webster's Collegiate Dictionary 10th Edition ("a set of questions for obtaining statistically useful or personal information from individuals") . Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. monitoring of viewing activities for ratings generation with the Logan questionnaire related to the broadcast for soliciting a rating for the purpose of providing a more accurate rating that is not only based just on number of viewers but viewer opinion regarding the broadcast. However, the Thomas et al. and Logan et al. combination fails to specifically teach the method such questionnaires are provided. Now note the Lett reference that discloses a system and method for subscriber interactivity in a television system. The claimed "a storage medium to store a questionnaire regarding a broadcast that is presented to a viewer on a display" is met by "[a]ccording to the present invention, interactive information is communicated between a central source and the subscriber terminal... The interactive information may include a template screen [questionnaire] downloaded from the central source to the subscriber terminal 14 to be completed by the user" (Lett 13:20-23)" wherein the storage medium is inherent to the transmission of the questionnaire to the user, since the questionnaire must be stored, at least temporarily, at the central source in order to be transmitted. The claimed "control circuitry to provide a feedback questionnaire to the viewer" is met by system manager 22 (Lett 5:20-32). The claimed "a viewer interface to receive feedback to the broadcast from the viewer based on the feedback questionnaire" is met by the display of the template (questionnaire) for entering in responses (Lett 13:20-27). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al.

and Logan et al. combination teaching a television distribution facility including feedback by questionnaire with the Lett system for implementing questionnaires for the purpose of providing a means transmitting and processing questionnaires in the system. The claimed “a communications interface to provide the feedback to the broadcast from the viewer to a server system and to receive ratings from the server system regarding other available broadcasts based on viewer feedback from other viewers, the ratings indicating a likelihood of interest in the available broadcasts for the viewer” is met by the Thomas et al, Logan et al., and Lett combination as discussed above wherein the collected data is passed to television distribution facility 28 or other suitable data processing facility for analysis” (Thomas [0059]), “[c]ertain functions, such as...data collection functions, may require that user television equipment 32 transmit data to television distribution facility 28 over communications path 34. If desired, such data may be transmitted over telephone lines or other separate communication paths” (Thomas [0040]). The claimed “wherein the control circuitry further provides the ratings regarding other available broadcasts to the viewer” is met by the Thomas et al, Logan et al., and Lett combination wherein the television distribution facility provides the real-time ratings information for display on user television equipment (Thomas [0069]).

As to claim 23, please see rejection of claim 21.

14. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Logan et al. (US 5,732,216), Lett (US 5,539,822), McKenna et al. (US 4,816,904).

As to claim 22, the claimed “wherein the control circuitry retrieves the questionnaire from the storage medium in response to a request from the viewer.” Note the Thomas et al.,

Logan et al. and Lett combination teaches providing a questionnaire, retrieved from storage, from the television distribution facility to the user, as discussed above. However, the Thomas et al., Logan et al. and Lett combination does not specifically disclose retrieving the questionnaire in response to a request from the viewer. Now note the McKenna et al. reference that discloses a television and market research data collection system and method wherein survey questionnaires are stored in a data collection unit and displayed to a user upon user request (by selection of the survey pushbutton switch) (McKenna 7:28-47). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al, Logan et al., and Lett combination providing a questionnaire with the McKenna et al. questionnaire upon request for the purpose of allowing the user to choose a convenient time to complete the questionnaire.

15. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Logan et al. (US 5,732,216), Lett (US 5,539,822), Herz et al. (US 5,758,257).

As to claim 24, the claimed “wherein the communications interface provides viewer characteristic information to the server system along with the viewer feedback.” Note the Thomas et al. reference discloses a plurality of data that may be collected and distributed to the headend (Thomas [0059]). The Thomas et al. reference further discloses “[w]hen the user selects options button 182, the user is provided with opportunities to select a type of real-time ratings information that the user desires to view...[t]he user may direct the program guide to display real-time ratings information for the nation, for a state, for a metropolitan area, a city or town, or any other suitable geographic area” (Thomas [0070]). However, the Thomas et al. reference

does not specifically disclose a method for identifying ratings specific to a geographic area.

Now note the Herz et al. reference that discloses a system and method for scheduling broadcast of and access to video programs and other data using customer profiles. The claimed “further comprising receiving viewer characteristic information about the viewer along with the feedback from the viewer” is met by the receipt of customer questionnaires, customer demographics, relevance feedback techniques, default profiles and the like (Herz 4:33-58) wherein demographic information includes geographic location such as by zip codes (Herz 11:59-66). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al. feedback with the Herz et al. feedback with viewer characteristic information for the purpose of providing a data to identify feedback based on location and thus determine ratings for specific geographic locations.

16. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Logan et al. (US 5,732,216), Lett (US 5,539,822), and Sahai et al. (US 6,594,699 B).

As to claim 25, the claimed “further comprising a register containing information regarding the entertainment system of the viewer and wherein the communications interface provides hardware capabilities information from the register to the server system along with the viewer feedback.” Note the Thomas et al. reference teaches the monitoring of a plurality of user characteristics including the usage of various program guide screens and non-program-guide applications the user runs. However, the Thomas et al. reference does not specifically teach monitoring hardware capabilities. Now note the Sahai et al. reference that discloses a system for capability based multimedia streaming over a network. The claimed “further comprising a

register containing information regarding the entertainment system of the viewer and wherein the communications interface provides hardware capabilities information from the register to the server system” is met by “[t]he [client] capabilities can be shipped and then stored n the server” wherein a register for storing the hardware capabilities is inherent to the providing of the hardware capabilities information as evidenced by the ability to request hardware capabilities from the client (Sahai et al. 3:5-60; 32-40). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Thomas et al., Logan et al., and Lett et al. combination teaching a monitoring system with feedback to include the Sahai et al. hardware capabilities for the purpose of providing programming providers with data regarding the capabilities of user systems in order to efficiently determine what type of applications or enhanced programming options to provide to viewers. Note the claimed “along with the viewer feedback” is met by the combination as discussed above.

17. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 2005/0149964 A1) in further view of Logan et al. (US 5,732,216), Lett (US 5,539,822), Barrett et al. (US 6,005,597).

As to claim 26, the claimed “further comprising a storage medium to store information regarding available broadcasts” is met by “[m]ain facility 22 contains a program guide database 24 for storing program guide information such as television program guide listings data... Information from databases 24 and 26 may be transmitted to multiple television distribution facilities” (Thomas [0028]) and transmitted to user television equipment (Thomas [0039]) wherein it is inherent that the program guide information at least be temporarily stored at

the television distribution facility in order for it to be transmitted to the user television equipment. The combined systems of Thomas et al. and Herz et al. fail to specifically disclose the claimed “and wherein the control circuitry assembles a list of available broadcasts using viewer characteristic information for a selected viewer; ranks the available broadcasts in the list based on the rating for each respective broadcast; and presents a programming guide showing the ranked list to the viewer.” Now note, the Barrett discloses a method and apparatus for presenting a program guide of available broadcasts to a viewer where the available broadcasts are ranked based on viewer characteristics information for the advantage of providing the viewer with a quick and convenient way to select a program desired by the viewer. This system provides a redacted listing of broadcast programs based on the viewer characteristics to facilitate quick program selection instead of selecting from a full cumbersome program listing. See col. 2, lines 9-43 and col. 7, lines 50-57. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined systems of Thomas et al. and Herz et al. to include presenting a program guide of available broadcasts to a viewer wherein the available broadcasts are ranked based on viewer characteristics information, as taught by Barrett, for the advantage of providing the viewer with a quick and convenient way to select a program desired by the viewer.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

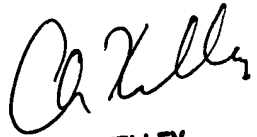
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny Ma whose telephone number is (571) 272-7351. The examiner can normally be reached on 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jm


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